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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

C. BROOKS CUTTER,

Plaintiff,

v.

FOOD AND DRUG ADMINISTRATION and
DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendants.

No. 1:09-cv-00107-LJO-DLB

**PARTIES' STIPULATION TO EXTEND
PROTEST DATE AND RESET STATUS
CONFERENCE**

Defendants, the United States Food and Drug Administration ("FDA") and Department of Health and Human Services, by and through their attorneys, Benjamin B. Wagner, United States Attorney, and Yoshinori H. T. Himel, Assistant United States Attorney; and Plaintiff, C. Brooks Cutter, respectfully request that this Court modify the schedule set forth in the Court's Order dated April 13, 2010.

In the "Parties' Stipulation to Extend Protest Date, and Reset Status Conference" approved April 13, 2010, the Court extended the time in which the Plaintiff may challenge FDA's withholdings until July 14, 2010.

In the time since the Court's April 13th Order, the parties have continued to make significant progress in narrowing the remaining issues and moving toward a resolution of this case. On June 11, 2010, FDA responded by letter to the list of concerns that Plaintiff submitted to the agency on March

25, 2010. In that response, FDA listed the types of information that it could restore to the documents previously released to Plaintiff and explained why the agency would be unable to restore other types of information that Plaintiff requested. FDA also provided Plaintiff with revised versions of the redacted documents with some information restored. On July 14, 2010, Plaintiff contacted FDA counsel and advised that he still had concerns about FDA's redactions. Plaintiff submitted a list of redactions he questioned to the agency on the same day. The list provided by Plaintiff regarding his concerns is substantially shorter than the list of concerns Plaintiff submitted to FDA on March 25th. The parties believe that they are making significant progress and would like to continue working amicably toward a mutually agreeable resolution of this matter.

FDA has agreed to review Plaintiff's July 14th list and produce any revised versions of the questioned documents to Plaintiff on or before August 31, 2010. The parties have agreed that Plaintiff will have until October 15, 2010, to review any revised documents and to determine whether to formally challenge FDA's withholdings. Should Plaintiff decide not to challenge the withholdings, there would be nothing left to litigate, and the parties should be able to stipulate dismissal. If Plaintiff decides to challenge FDA's withholdings, the issues remaining for the Court to resolve would likely be narrowed.

The parties will not know the case status until October 15, 2010, which is after the status conference set for August 11, 2010, at 9:30 a.m., before Judge Beck. To serve judicial efficiency, the parties request that the status conference be continued until November 9, 2010, at 11:00 a.m. before Judge Beck.

The parties previously agreed that FDA will not prepare a Vaughn index of redacted information at this time. If Plaintiff decides to challenge FDA's withholdings, FDA agrees to produce a Vaughn index within thirty (30) calendar days after Plaintiff gives defense counsel of record and FDA counsel a notice of his intent to challenge the withholdings.

The time period for Plaintiff's deadline to challenge Defendants' withholdings has already been extended a total of three hundred and twenty-three (323) days, from August 25, 2009, to allow the parties to continue their ongoing efforts to reach a mutually agreeable resolution to this matter.

Based upon the foregoing, the parties move this Court to enter an order granting Plaintiff until October 15, 2010, to challenge Defendants' withholdings, consistent with the terms set forth in this stipulation, and to reset the status conference currently scheduled for August 11, 2010, at 9:30 a.m. to November 9, 2010, at 11:00 a.m. before Judge Beck.

Dated: July 20, 2010

KERSHAW CUTTER and RATINOFF LLP

By: /s/ Ian Hunter
for: C. BROOKS CUTTER

Dated: July 20, 2010

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By: /s/ Y Himel
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ORDER

Good cause appearing, Plaintiff's deadline for challenging Defendant's withholdings is extended until October 15, 2010. The status conference presently set for 9:30 a.m. on August 11, 2010, is CONTINUED until 11:00 a.m. on November 9, 2010, before Judge Beck.

IT IS SO ORDERED.

Dated: July 22, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE